IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII Rule 32(2) (b)

Description of Case.

W.P. No. 1361 (S/S) of 2006

Date of decision :- 01-11-2006

~~**A.F.R. Approved for Reporting**~~

Not approved for reporting

Date :- 01-11-2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Civil Writ Petition No. 1361 (S/S) of 2006

Shri Ram Yadav
S/o Late Guru Prasad
R/o 43/3 Dharampur,
District- Dehradun ...Petitioner

Versus

1. Zila Panchayat Haridwar through its Chairman
2. Chairman Zila Panchayat, Haridwar ... Respondents.

Sri Arvind Vashisth, learned counsel for the petitioner.
Sri Sharad Sharma, learned counsel for the respondents

Per Hon'ble J.C.S Rawat, J.

1. By means of this Writ Petition, moved under Article 226 of the Constitution of India, the petitioner has sought the following reliefs:-

> "i) To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 13.09.2006 passed by the Respondent no. 1 Zila Panchayat Haridwar.
>
> ii) To issue any other writ order or direction which this Hon'ble High Court may deem fit and proper in the facts and circumstances of the case.
>
> iii) To award the cost of the petition to the petitioner."

2. The petitioner was selected President of Uttaranchal Zila Panchayat Karmachari Sang Dehradun. It was further pleaded that the petitioner was even called for meeting with Secretary Rural Development and Panchayat Raj for discussing and sorting out problems of union of employees of Zila Panchayat. It was further pleaded that legitimate demands of employees of Union were not fulfilled by the petitioner and the Workers Union had taken a decision to go on strike w.e.f. 11.09.2006 on the ground that the respondents had failed to abide the terms of the agreement

arrived in between the administration and employees of union. As a result of the aforesaid strike, the petitioner was suspended. The suspension order has been challenged before this court by way of writ petition.

3. Heard Sri Arvind Vashisth, learned counsel for the petitioner; Sri Sharad Sharma, learned counsel for the respondents and perused the record.

4. Learned counsel for the petitioner contended that the suspension order had been passed without ordering any inquiry or directing any inquiry in contemplation. The suspension order is illegal as no chargesheet has been served upon the petitioner. It was further pleaded that the charges which has been levelled in the suspension order are not of serious nature which are likely to result in major penalty in discharging of duties. Therefore, the suspension order is liable to be quashed. Learned counsel for the respondents refuted the contention and contended that immediately after the suspension order, the inquiry has been ordered. The learned counsel for the respondents has stated that the suspension order has been passed according to the law. Perusal of the suspension order reveals that the petitioner had been suspended on the ground that he locked out the office and committed indiscipline, as such, he was suspended.

5. This court while exercising the power of judicial review under Article 226 of the Constitution of India, does not act as an appellate authority. The petitioner has not alleged that there was any malafide or violation of natural justice or lack of competence in passing the said impugned order. It is well settled position of law that the High Court while exercising

the power of judicial review under Article 226 of the Constitution of India, does not as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct the errors of law or procedural error or violation of principles of natural justice. The judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The power of judicial review is meant to ensure that individual receives fair treatment and not to correct the errors. The court may interfere where authority held the proceedings against the delinquent officer in a manner inconsistent with the principles of natural justice.

6. It is well settled position of law that when the appointing authority seeks to suspended an employees, pending inquiry or contemplated inquiry or pending investigation into grave charge of misconduct or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence place before the appointing authority and on application of the mind by appointing authority. Ordinarily when there is an accusation of grave nature, the delinquent employees have to be kept away from the establishment till the charges are finally disposed of. Whether the charges are baseless, malicious or vindictive and are framed only to keep the individual concerned out of the employment is a different matter. But even in such a case, no conclusion can be arrived at without examining the entire record in question and hence it is always advisable to allow disciplinary proceeding to continue unhindered. In matters of this kind,

it is always advisable that the concerned employees are kept out of the mischief's range. If they are exonerated, they would be entitled to all their benefits from the date of the order of suspension. **[See State of Orissa VS. Bimal Kumar Mohanty (1994) 4 SCC p/126].**

7. In view of the above discussion, I am of the view that the suspension order does not require interference in this matter. However, it is made clear that the competent authority will serve the chargesheet within ten days' from the date of receipt of the certified copy of the order and the Inquiry Officer would complete the inquiry within four months from the date of receipt of the chargesheet and thereafter final decision would be taken by the competent authority within two months after the receipt of the inquiry report.

8. In view of the forgoing discussion, the writ petition is disposed of accordingly. The parties shall bear their own costs.

9. All applications pending in this case are stand disposed of in terms of the judgment.

(J.C.S.Rawat, J.)

1st November, 2006

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